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IN THE

Supreme Court Of The United States

OCTOBER TERM, 1981

CONNIE LOUISE LASCANO,

Petitioner,

VS.

STATE OF ARKANSAS,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether or not a suspect must be advised of his or her rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, and related cases, prior to any interrogation by the police officers.

2. Whether the petitioner's rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, and related cases, were violated by the authorities in this case.

3. Whether the police may continue to use a psychological approach on a suspect in the form of statements to the suspect after the suspect indicates that the questioning is at an end.

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STATE OF ARKANSAS,

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PETITION FOR WRIT OF CERTIORARI TO THE ARKANSAS SUPREME COURT

The petitioner respectfully prays this Court to issue a writ of certiorari to review the judgment and opinion of the Arkansas Supreme Court set out herein, *infra*.

OPINION BELOW

The opinion of the Arkansas Supreme Court appears as *Connie Louise Lascano v. State of Arkansas*, —— Ark. —— (March 22, 1982) and is reproduced in the Appendix, *infra*. The order of the Arkansas Supreme Court denying rehearing was rendered on May 3, 1982, without opinion.

JURISDICTIONAL STATEMENT

The opinion of the Arkansas Supreme Court was issued on March 22, 1982. The petition for rehearing was denied without opinion on May 3, 1982. This Court has jurisdiction by virtue of 28 U.S.C. §1257(3).

CONSTITUTIONAL QUESTIONS INVOLVED

UNITED STATES CONSTITUTION, AMENDMENT 5

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

UNITED STATES CONSTITUTION, AMENDMENT 14

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of any citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF THE CASE

On the 24th day of October, 1980, the body of one Jeanie Hunt was found in her home in Washington County, Arkansas, under circumstances which pointed to homicide. On October 26, 1980, at approximately 7:30 p.m., two police officers drove to the petitioner's residence in Fayetteville, Arkansas, on what is known as Betty Jo Street. The officers knocked on the door and the petitioner answered. The officers requested that she accompany them to the office of the Sheriff of Washington County for an interview. The officers did not advise her that she was under no legal obligation to comply with such a request, such advice being required by *Rule* 2.2 and *Rule* 2.3, *Arkansas Rules of Criminal Procedure*, which provides as follows:

> "(a) A law enforcement officer may request any person to furnish information or otherwise cooperate in the investigation or prevention of crime. The officer may request the person to respond to questions, to appear at a police station, or to comply with any other reasonable request . . .
>
> (b) If a law enforcement officer acting pursuant to this rule requests any person to come to or remain at a police station, prosecuting attorney's office or other similar place, he shall take steps as are reasonable to make clear that there is no legal obligation to comply with such a request."

The officers brought her to the sheriff's office in a police car, placing her in the back seat. At the sheriff's office she was placed in the hands of Sgt. Doug Fogley. Sgt. Fogley, without advising her of any of her rights, asked the petitioner her name, date of birth, and telephone number.

Then the officer asked her if she was acquainted with the deceased, Jeanie Hunt. The petitioner answered that she was acquainted with her. Then the officer asked her concerning the last time she had seen the deceased. The petitioner replied that she had seen the deceased on Friday night, which was the night of the apparent homicide, at about 8:30. This was in the time period in which the apparent homicide had been committed, according to the medical testimony (R. 60). At this time, the officer advised the petitioner of her rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602. The petitioner was then asked whether or not she owned a gun, which she admitted she did own.

Subsequent to this she was formally placed under arrest, charged with the murder of Jeanie Hunt, based on the fact that she had admitted to the investigating officers at the start of the interrogation that she had been with Jeanie Hunt at the approximate time of death (R. 83).

Subsequent to the first interrogation and on October 27, 1980, the petitioner was interviewed by the Sheriff of Washington County, Herb Marshall. She at that time was in custody in the Washington County Jail. The sheriff asked the petitioner if she was still "aware of her rights" (R. 159). The petitioner told him she was. The sheriff then told the petitioner that one of two people had killed Jeanie Hunt, the petitioner or her boyfriend, Ben Hunt (R. 159). The petitioner, when confronted by Sheriff Marshall stating to her that he would have to arrest Ben Hunt, her boyfriend (R. 160), told the sheriff that she committed the crime (R. 160). Prior to this time the petitioner had informed the sheriff that she did not want to make any more statements or talk anymore (R. 210). The sheriff threatened her with

involving Ben Hunt in the murder if she refused to answer questions. This type of questioning resulted in the petitioner signing a written confession, identified as State's Exhibit 17 (Appendix).

Sgt. Fogley, well knowing the result of the interview with Sheriff Marshall and shortly *after* the interview and on the same day, read to the petitioner her *Miranda* rights. Then Sgt. Fogley wrote out a written statement based on the previous interview with Sheriff Marshall (R. 517) and Ms. Lascano signed it (State's Exhibit 17, Appendix).

Information was filed against the petitioner charging the petitioner with murder in the first degree in violation of Ark. Stats. Ann. §41-1502. Petitioner was found guilty of murder in the first degree and was sentenced to thirty-five years in the Department of Corrections.

Motions to suppress were filed (R. 8, R. 22-23) which were overruled by the trial court. On the trial of the case, State's Exhibit No. 17, the alleged confession on the part of the petitioner, was introduced over the objections and exceptions of the petitioner.

ABSTRACT OF PERTINENT TESTIMONY

DOUG FOGLEY:

DIRECT EXAMINATION (R. 58-96)

I saw the defendant at the sheriff's office on October 26th about 7:55 p.m. (R. 59). I was in the CID office with Sheriff Marshall and Deputy Rexford when Ms. Lascano was brought back there (R. 60). I advised her that we were conducting an investigation into the homicide regarding Jeanie Hunt and that we were talking to everybody who might have known the victim (R. 60). I got some basic information, her name, date of birth, telephone number, and then I asked her if she was acquainted with the victim and she said she was. Then I asked her the last time she had seen the victim (R. 60). She said Friday night. I said, "Friday night?" and she said, "Yes, about 8:30 (R. 60)." At that time I stopped the interrogation and advised her of certain rights. I realized that the victim was killed in the general time period (R. 60). The rights were reduced to writing, the defendant signed it (R. 61).

I then asked her to explain her actions from 7:30 on the night in question and she gave me a statement of what she had done. The statement was not incriminating (R. 65). I told her I felt we had enough probable cause to hold her for a murder charge on Jeanie Hunt (R. 83).

Q. Would you recite to the Judge the factors you had in connection with this case that caused you to believe you had probable cause to arrest Ms. Lascano (R. 83)?

A. The very first fact was that prior to executing the rights waiver that she had in fact been with the

victim and had seen the victim by her own admission at the approximate time of death (R. 83).

CROSS-EXAMINATION (R. 96-113)

I first saw her before 8 p.m. on October 26th at the Washington County Sheriff's Office, criminal division. I know that she did not drive her own vehicle to the sheriff's office (R. 96). From my own calculations, I believe that the death had occurred Friday evening (R. 97). We interviewed Ms. Lascano two days after the death.

Q. At whose direction was Ms. Lascano taken into custody (R. 97)?

A. At whose direction was she taken into custody? She was picked up at the direction of the sheriff (R. 97).

The questioning was done at the police station. The information that caused us to act was information she gave us that she had seen Jeanie Hunt the evening that we believed her death to have occurred (R. 100).

REDIRECT EXAMINATION (R. 113-119)

Connie Lascano's name came into the investigation as being an acquaintance of Ben Hunt (R. 114). We also had information from a witness, Kent Starr, that had spoken with the victim at approximately nine o'clock (R. 115).

Q. I take it somewhere in that interview with her you told her she was a suspect in this homicide, is that correct (R. 115)?

A. She was well aware of that when I stopped to read her her rights (R. 115).

RECROSS EXAMINATION (R. 119-122)

Q. You stated to Mr. Smith that you had some information that an individual by the name of Kent Starr had spoken with Jeanie Hunt about nine o'clock on the evening of her death.

A. That was the probable cause that I had.

I inadvertently left it out and it was very important to me at the time when I first arrested Ms. Lascano (R. 120).

Q. So when you took her into custody to question her on an investigatory basis, you realized and you believed that she was possibly a person with a motive to have done this killing?

A. (There was no response) (R. 122).

I possibly told her that she and Mr. Hunt were the only people with a motive (R. 122).

SUE WILSON:

DIRECT EXAMINATION (R. 124-132)

I am an employee of the Washington County Sheriff's Department. I was present at an interview of Ms. Lascano by Sheriff Herb Marshall. It took place about three o'clock on October 27, 1980 (R. 125). The sheriff asked her if she remembered her rights and then asked her if she wanted an attorney and she responded, "No" (R. 126). I made notes of the interview (R. 127). There were no threats made to her, the only thing that I think made her finally tell Herb was the fact that he wanted to include Ben conspiring with her (R. 131). She just wanted Ben left out of it completely (R. 132). He told her that until the gun was found he would have to assume that she could have been in on it with someone else and he just kept stressing that "we need

to find the gun (R. 132)." I guess she just wanted to clear Ben because the sheriff said, "You could have conspired with Ben, and unless we find the gun, we won't know (R. 132)."

CROSS-EXAMINATION (R. 133-146)

It seems to me that she had been in jail awhile.

Q. You stated to Mr. Smith that you believed the sheriff had asked her if she wanted an attorney.

A. When she first came in it was just "no" to everything (R. 134).

My notes do not reflect that the sheriff asked her if she wanted an attorney (R. 134).

Q. Do these notes, are they an accurate reflection of everything that took place in the office?

A. Yes, I believe so (R. 135).

Q. And if they do not include the fact that he asked her about an attorney, then he probably did not?

A. Probably did not (R. 135).

The interview took about forty minutes (R. 135).

Q. Was there a form filled out, was she advised of her rights at this time?

A. No, I don't believe so. The sheriff said, "Do you remember when we read you your rights?" And she said, "Yes" (R. 137).

The sheriff told her that Ben and her could have been in on it together and was going to apply efforts towards Mr. Hunt (R. 138).

Q. He made those statements before she admitted anything, didn't he?

A. Huh-uh. Then she admitted it all. "OK, I'll say I did it." "It's over with. Ben had nothing to do with it." (Defendant's Exhibit Exhibit A, notes of Sue Wilson, introduced into evidence, Appendix).

The sheriff wanted to include Ben Hunt in a conspiracy situation. I believe this had something to do with Ms. Lascano talking (R. 145-146). The interview took about forty minutes. She didn't admit having anything to do with the killing until after the sheriff had talked about this conspiracy situation (R. 149). The sheriff meant a conspiracy between Ms. Lascano and Ben Hunt to kill Jeanie Hunt.

CROSS-EXAMINATION (R. 153-155)

The sheriff reminded her that Ben Hunt could not be completely cleared until after the gun was found (R. 153) and that if she didn't help him find the gun, Ben Hunt was going to be involved (R. 153-154). She finally said she had thrown the gun in the river after she left Jeanie's house (R. 154). Ms. Lascano was in custody and had spent the night in jail (R. 155).

HERB MARSHALL:

DIRECT EXAMINATION (R. 156-163)

I saw the defendant at the Washington County Sheriff's Office (R. 156). Her rights were given to her by Doug Fogley in the presence of Deputy Rexford (R. 157). The next day I had an opportunity to talk to Ms. Lascano. It was about 2:45 p.m. in the afternoon. That would have been Monday. I asked the jailer to bring Ms. Lascano to the CID office (R. 158). I asked her if she had made a telephone

call yet. She said no. I asked her if she had called her parents and she said no. I asked her if she wanted to make a telephone call. She said no. I asked her if she wanted to call an attorney and she said no (R. 159). I told her I wanted to talk to her about the case and what I said was, "Are you still aware of your rights?" and she said, "Yes" (R. 159). And I said, "You know that you don't have to talk to me." She said, "I know that." Then I said, "I feel like you know who killed Mrs. Hunt." I said, "It had to be one of two people. It's either you or Ben Hunt" (R. 159). She said there was no conspiracy between her and Ben Hunt, and I said, "Well, you know I am going to have to pick up Ben Hunt" (R. 160). She said, "Ben had nothing to do with it." I said, "How do you know Ben had nothing to do with it?" She looked at me and said, "I done it" (R. 160). I asked her if she done it, where is the gun? She never answered me. I told her that if Ben Hunt had nothing to do with it, then she and only she would know where the gun was (R. 160). She then said she threw it in the river. I never did threaten her (R. 161). She never did indicate that she wanted to stop and talk to her attorney. She was reluctant to call anybody (R. 162).

CROSS-EXAMINATION (R. 164-180)

I was present when she was first taken into custody on Sunday evening (R. 164). When she arrived at the CID office, she walked into the room with Officer Rexford. I considered her as a suspect in a homicide case. I was present when she told Sgt. Fogley at the first interview that she had been at Jeanie Hunt's house the night Jeanie Hunt was killed (R. 165). He then asked her when was the last time she saw Jeanie Hunt, and she said, "Friday night," and he said, "What time?" and she said, "About 8:30," and

that is when he stopped her and read her her rights (R. 166). She was booked on Sunday evening and was in jail until my interview with her at 2:45 on Monday (R. 169). Before she admitted anything to me on Monday, Ben Hunt's name was brought up (R. 170). It was in this first interview on Monday that she told me that she and Ben had been having an affair. I told her that I intended to pick Ben up and bring him back in (R. 171). I told her that I already had officers out to pick him up (R. 172). I told her that I would have to "come down on him hard" (R. 173). She told me she loved Ben (R. 174). She confessed at this point and I said either you or Ben killed Mrs. Hunt, and she said, "Ben had nothing to do with it" (R. 175), and she said, "I done it."

I asked her why she was not eating her meals. She said she was not hungry (R. 169) She was living on Cokes. I advised her that she possibly needed psychiatric treatment (R. 168).

CONNIE LOUISE LASCANO:

DIRECT EXAMINATION (R. 200-215)

I remember when I was first informed by the sheriff's office that I was wanted for questioning (R. 200). Two officers came to my door and said they wanted me for questioning (R. 200). They placed me in the back seat of their car and told me that this was in regard to Jeanie Hunt's death. They took me to the sheriff's office. Sgt. Fogley interviewed me on the Sunday evening (R. 202). The only persons present were police officers (R. 203). Sgt. Fogley discussed with me the possibility of taking a polygraph examination. He made it sound like that if I didn't

take it that they would consider me guilty (R. 203). After the test, Sgt. Fogley interviewed me again (R. 203). He said that I had flunked the test and that I might as well confess (R. 204). I was confused and scared at this point. I spent that night in the county jail and was interviewed the next day by Herb Marshall, the sheriff (R. 205). He told me that Ben surely had a motive to kill Jeanie and that there was a $15,000.00 life insurance policy on Jeanie and that was enough motive for him to want Jeanie dead (R. 206). It was very important to me that Ben Hunt not be involved in this situation (R. 206). He told me that he would bring Ben in and really be hard on him (R. 209). I was very scared for Ben (R. 209). The sheriff told me he thought I was a very sick girl and that I certainly wouldn't go to prison, that they would send me to the Arkansas State Hospital (R. 210). I told Sheriff Marshall not to talk to me anymore. This was in the middle of the interview. I told him that I didn't want to answer anymore questions. He told me the night before that I didn't have to (R. 210). Then he said I had to answer the questions or Ben would be brought in. I couldn't afford an attorney. I understood from them that they would appoint me one but I would have to wait until the judge did it (R. 210). I also thought I could say I didn't want to answer anymore questions and they wouldn't question me anymore. When I tried that the sheriff just kept on (R. 210). I said that I would say that I killed Jeanie if he would stop asking me questions. I didn't want to talk to him anymore (R. 210-11).

Q. What did he say to you?

A. Well, after I told him I didn't want to answer anymore of his questions, he said I had to answer ques-

tions. If they didn't find the gun they would still involve Ben in conspiracy charges.

I refused to say anything at first and that I didn't want to say anymore. Then he kept going on about how he needed the gun (R. 211). The sheriff told me that Ben Hunt would be involved unless there was evidence from a firearm (R. 211). I was very upset about what Herb Marshall had said about Ben. I knew that Ben couldn't handle anymore stress (R. 212). Later that afternoon, Sgt. Fogley came to talk to me in the prosecutor's office. I gave him a statement of what happened. The threats towards Ben had an effect on my statements (R. 213).

CROSS-EXAMINATION (R. 215-236)

The first interview was at the sheriff's office on October 26th. They advised me of my rights after I told them I had been with Mrs. Hunt Friday night around 8:30 (R. 218). Another interview was conducted concerning the gun (R. 222). When they couldn't find the gun, I told them I didn't know where it was and Officer Fogley told me I was going to be held for the murder of Mrs. Hunt. The interview stopped around midnight (R. 225). Officer Fogley indicated a couple of times that I might want to talk to a lawyer. This happened on October 26th. When he read me my rights, he asked me if I wanted a lawyer (R. 227). When I was taken to the sheriff's office, Sheriff Marshall and Mrs. Wilson were the only ones there. The reason I told the sheriff about doing this was because I didn't want to see Ben Hunt interrogated (R. 228). The sheriff asked me about my health and why I wasn't eating and offered to let me call my parents and offered to let me call an attoroney (R. 230). I thought I couldn't get an attorney until I went to court. I couldn't have one appointed unless I went to

court (R. 230). I told them I didn't have to answer questions if I didn't want to (R. 231). Sheriff Marshall just said he'd drag Ben in. He said, "I'll bring him in, grill him, and be real hard on him" (R. 232).

REDIRECT EXAMINATION (R. 236-244)

When I was at the police station I understood that if I wanted to call an attorney I could, but since I couldn't afford one I would have to wait until one was appointed. I understood that if I didn't want to talk to them anymore, they would stop. Herb Marshall just ignored it and went on (R. 238).

(End of testimony on Motion to Suppress.)

SGT. FOGLEY, during trial of the case:

I had an opportunity later to take a written statement from Ms. Lascano (R. 500). This statement was taken from Ms. Lascano after she was informed and advised of her Miranda rights (R. 500).

(State's Exhibit 17 was introduced in evidence over the objection of the defendant, R. 501-509, see Appendix.)

This statement was concluded at 7:01 p.m. October 27, 1980, and is signed by Ms. Lascano. This statement is in my handwriting (R. 515). I read it to her.

CROSS-EXAMINATION

I started questioning her at 5:13 p.m. on October 27, 1980, and ended at 7:01 (R. 516). I knew the contents of the previous interview with Mr. Marshall (R. 517).

ARGUMENT

1. WHETHER OR NOT A SUSPECT MUST BE ADVISED OF HIS OR HER RIGHTS UNDER *MIRANDA v. ARIZONA*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, AND RELATED CASES, PRIOR TO ANY INTERROGATION BY THE POLICE OFFICERS.

The officers in this case had focused attention on two people as prime suspects in the alleged homicide — the husband of the deceased, Ben Hunt, and the petitioner, Connie Lascano. Quoting from Sgt. Doug Fogley's testimony: "I possibly told her that she and Mr. Hunt were the only people with a motive" (R. 122), and the quotation of Sheriff Herb Marshall when he testified, "I said, 'It had to be one of two people. It's either you or Ben Hunt' " (R. 159).

Sgt. Fogley, in answer to the question, "At whose direction was Ms. Lascano taken into custody?" (R. 97) testified: "A. At whose direction was she taken into custoday? She was picked up at the direction of the sheriff" (R. 97). Then he further testified: "The information that caused us to act was information she gave us that she had seen Jeanie Hunt the evening that we believed her death to have occurred" (R. 100).

Sgt. Fogley testified that Connie Lascano's name came into the investigation as being an acquaintance of Ben Hunt (R. 114), and then testified: "We also had information from a witness, Kent Starr, that had spoken with the victim at approximately nine o'clock" (R. 115).

In *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, 10 ALR 3rd 1060, the Court approved the in-

structions given to agents of the Federal Bureau of Investigation as follows:

> "(2) When is the warning given? The FBI warning is given to a suspect at the very outset of the interview."

It is also stated in *Miranda v. Arizona*, supra:

> "Over the years the Federal Bureau of Investigation has compiled an exemplary record of effective law enforcement while advising any suspect, or arrested person, at the outset of an interview, that he is not required to make a statement, that any statement may be used against him in court, that the individual may obtain the services of an attorney of his own choice and, more recently, that he has a right to free counsel if he is unable to pay."

The sheriff, Herb Marshall, had testified:

> "I was present when she was first taken into custody on Sunday evening (R. 164). When she arrived at the CID office she walked into the room with Officer Rexford. I considered her as a suspect in a homicide case."

This interrogation did not take place in the home of a relative or in the presence of friends or in the home of the defendant, but in the CID interrogation room of the sheriff's office. No play on words by the officers in these interrogations can obscure the fact that the petitioner was one of two prime suspects.

With the background information the officers possessed, there was no excuse for not giving the defendant her

warnings prior to the commencement of interrogation. The only thing the officers needed to know was who was present at the victim's home at about 8:30 p.m. on Friday night. The giving of the *Miranda* warning after eliciting this information from the petitioner was "closing the barn door after the horse is out."

It is said in *Silverthorne Lbr. Co. v. United States*, 251 U.S. 385 (1920):

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all."

Under *Escabedo v. Illinois*, 378 U.S. 478 (1964), the decisive state is reached when the investigation has begun "to focus on a particular suspect".

In the notes to *Miranda v. Arizona*, supra (10 ALR 3rd 1060), it is said:

> "However, the Court in *Miranda* no longer attempted to draw a line between the 'investigatory' and 'accusatory' process."

The warnings required and the waiver necessary are, in the absence of a fully effective equivalent, prerequisites to the admissibility of any statement made by the defendant. In *Miranda v. Arizona*, supra, it is said:

> "No distinction can be drawn between statements which are direct confessions and statements which amount to admissions of part or all of an offense. The privilege against self-incrimination protects the individual from being compelled to incriminate himself in any manner, it does not distinguish degrees of incrimination."

2. WHETHER THE PETITIONER'S RIGHTS UNDER *MIRANDA v. ARIZONA*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, AND RELATED CASES, WERE VIOLATED BY THE AUTHORITIES IN THIS CASE.

The rights of the petitioner were violated by the authorities in this case. First, in the initial interrogation. Secondly, in the subsequent interview on October 27, 1980. The sheriff merely asked her if she was aware of her rights. During this interview it is testified that the sheriff began rather a psychological form of pressure on the petitioner. The sheriff well knew the relationship between the petitioner and Ben Hunt, the husband of the victim of the homicide. He knew the emotional state of the petitioner. It is testified that at about the middle of the interview, the petitioner informed the sheriff that she didn't want to answer anymore questions or talk to him anymore (R. 210-211). It is testified that the sheriff then began a psychological ploy. In *Miranda v. Arizona*, supra, the Court said:

> "Again we stress that the modern practice of in-custody interrogation is psychological rather than physically oriented. As we stated before: 'Since *Chambers v. Florida*, 309 U.S. 227, 84 L.Ed. 716, 60 S.Ct. 472, this Court has recognized that coercion can be mental as well as physical.' "

The sheriff at this point began accusations against Ben Hunt in which he threatened to involve Ben Hunt in the homicide charges, knowing full well the effect that this would have on the petitioner. That this form of interrogation took place is borne out in the notes made by the sheriff's secretary, Sue Wilson (Defendant's Exhibit A, Appendix).

We quote in full from the transcribed notes taken by Ms. Wilson, the sheriff's secretary:

> "At 2:45 p.m. this date Connie Lascano was interviewed by Sheriff Herbert Marshall in the Criminal Investigation Office at the Washington County Sheriff's Department concerning the shooting death of Jeanie Hunt. After being reminded of her constitutional rights by Sheriff Marshall and agreeing to answer questions, Connie Lascano admitted killing Jeanie Hunt. This was after being accused of conspiracy with Ben Hunt to do away with his wife. She admitted that she alone was responsible for the death and Ben Hunt had nothing to do with it. When Sheriff Marshall questioned Connie as to the whereabouts of the gun, she refused to tell him, saying that it was done and the gun wasn't needed. Sheriff Marshall reminded her that Ben Hunt could not be completely cleared until the gun was found to prove that his fingerprints were not on the gun. She finally said she had thrown the gun in the river after she had left Jeanie's house. She advised she had thrown the gun as far as she could in the river after crossing the bridge on Highway 58-E and turning to the left."

It is clear that the petitioner's rights were not given to her at the interrogation in the sheriff's office.

The confession given by the petitioner on October 27, 1980, after the initial interrogation on October 26, 1980, and after the interrogation by the sheriff was a continuous process. As said in *Miranda v. Arizona*, supra, in a decision

involving *Westover v. United States*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, the Court said:

> "Despite the fact the FBI agents gave warnings at the outset of the interview, from Westover's point of view, the warnings came at the end of the interrogation process."

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3. WHETHER THE POLICE MAY CONTINUE TO USE A PSYCHOLOGICAL APPROACH ON A SUSPECT IN THE FORM OF STATEMENTS TO THE SUSPECT AFTER THE SUSPECT INDICATES THAT THE QUESTIONING IS AT AN END.

It is evidence from the notes of the sheriff's secretary (Defendant's Exhibit A, Appendix) and the testimony of the petitioner that even though the sheriff, at the request of the defendant, ceased asking questions or interrogating the witness that he continued with statements to the witness which were designed to "break her down". The threats to her boyfriend, Ben Hunt, etc. In view of defendant's emotional state, these statements by the sheriff were designed to wring a confession from the defendant. The psychological ploy is often more deadly than direct questioning. It is submitted that when the suspect indicates that he or she objects to answering anymore questions or being interviewed further, that all action shall stop.

The confession (State's Exhibit 17, Appendix) was a culmination of the original interrogation by Sgt. Fogley and Sheriff Marshall on two separate days without requisite warnings. Sgt. Fogley when the confession was given (State's Exhibit 17), did recite to the defendant the *Miranda* warnings prior to her signing the written confes-

sion. However, this was again "shutting the barn door after the horse had been stolen."

In *Nardone v. United States*, 308 U.S. 338 (1939), the Court held that information acquired by unconstitutional means were "fruits of the poisonous tree" and could not be used as evidence in a criminal prosecution. It is submitted that the confession designated as State's Exhibit 17 (Appendix) was the fruit of the poisonous tree.

The petitioner notes the absence of any decision from this Court clearly addressing the issue of psychological pressure brought to bear on a suspect, consequently this consideration in deciding whether to issue a writ of certiorari is here present. *Rule* 17(c), Supreme Court Rules, provides in pertinent part:

> "When a state court . . . has decided an important question of federal law which has not been but should be settled by this Court."

CONCLUSION

Counsel agrees with the reasoning in the dissenting opinions of Chief Justice Adkisson and Justice Purtle of the Supreme Court of Arkansas (Appendix).

For the aforementioned reasons and authorities, the petitioner respectfully prays this Court to issue a writ of certiorari to the Arkansas Supreme Court.

Respectfully submitted,

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SUPREME COURT OF ARKANSAS

No. CR 81-112

Opinion Delivered March 22, 1982

CONNIE LOUISE LASCANO ..... *Appellant*

v.

STATE OF ARKANSAS ..... *Appellee*

WASHINGTON COUNTY CIRCUIT COURT
FIRST DIVISION

HONORABLE MAHLON G. GIBSON, *Judge*

AFFIRMED.

STEELE HAYS, *Associate Justice*

Appellant was convicted of first degree murder and sentenced to 35 years in the Department of Correction. For reversal, she argues that the trial court erred in denying a motion to suppress tangible evidence, in admitting a confession and in refusing to declare a mistrial. We find no error and affirm the judgment.

On October 25, 1980, a Saturday, the body of Mrs. Jeanie Hunt was found in the kitchen of her Fayetteville home. She had been shot four times and death was thought to have occurred at about 8:30 or 9 the previous evening. Appellant, an acquaintance of Ben and Jeanie Hunt, was contacted by two deputies on Sunday evening and asked to come to the sheriff's office for questioning. Sergeant Doug Fogley of the State Police began the interview by asking her name, address, phone number and when she had last seen Jeanie Hunt. Appellant said, "About 8:30 p.m. on Friday." He immediately explained her rights to her and

obtained her signature on a waiver form. During the questioning appellant gave a non-incriminating account of her movements on Friday. Appellant was asked if she owned a handgun and said she did, which she kept in the glove compartment of her car. She agreed to a search of the vehicle and, when the pistol was not found, to a search of her apartment, which produced a partial box of Remington .22 caliber long-rifle cartridges containing 44 bullets, six less than the normal 50. The Remington cartridges had a yellow jacket, matching one recovered at the scene.

Appellant was told of these findings and that there was probable cause to charge her with murder. She remained in custody and at about 5 p.m. on Sunday she dictated and signed a confession. She gave an account of a turbulent love affair with Ben Hunt, the victim's husband, characterized by hostility and threats between the two women. In early October appellant purchased a pistol for protection, having some reason to think that Mrs. Hunt had a weapon. She said on Friday she saw Jeanie Hunt at a shopping center and decided to visit her; she wanted to find out where she stood with Ben and whether Ben and Jeanie planned to stay together. She took the pistol with her and arrived at about 8:30. They talked in the kitchen until Mrs. Hunt became angry. Shouting accusations she told appellant to get out of her house and pulled her toward the door. Appellant drew the pistol and fired four times at point blank range. She wiped her fingerprints from a drinking glass, drove home and changed clothes for work. After throwing the pistol from a bridge, she picked up her daughter and friends from a skating party and went to work. The pistol was later retrieved by the police.

Appellant argues her Fourth and Fifth Amendment rights were violated by the trial court in admitting her confession and in refusing to grant her motion to suppress the physical evidence. She claims no attempt was made by the deputies to comply with Rule 2.3, A. R. Crim. P., by informing her she was under no legal duty to accompany them to the sheriff's office. Further, before she was given the required Miranda warning she said she had seen Jeanie Hunt about 8:30 on Friday night. Appellant insists this admission that she had seen the victim near the time of death was fatal — that it opened the door to the whole case and everything obtained from her thereafter was tainted.

But the argument is not persuasive. No evidence at the scene implicated appellant and there is no indication Sergeant Fogley regarded her as a specific suspect. Appellant had not been singled out as a suspect; all individuals acquainted with the victim were being contacted and under such circumstances it is not impermissible to ask some preliminary information questions without overstepping constitutional protections. Here the interview had hardly begun and the questions asked were general. It seems entirely routine to ask when someone last saw the victim. Significantly, Sergeant Fogley immediately interrupted the questioning to give the Miranda warnings and there is nothing to suggest appellant was caught unawares by that single question. Her earlier steps to conceal the weapon and to wipe her fingerprints from the glass in the Hunt kitchen indicate she took deliberate precautions. Evidently she supplied a satisfactory explanation of her whereabouts on Friday and gave non-incriminating answers during the remainder of the interview. She had, in fact, seen Jeanie Hunt at a shopping center on Friday, but

whether she was referring to that encounter is not revealed to us. However that may be, no other incriminating information appears to have been obtained from her. In short, in the absence of some indication of bad faith tactics by the officer or some particular vulnerability of the individual, we are not willing to say on the basis of that marginal question that everything the appellant later disclosed must be excluded. The constitutional protections against self-incrimination do not extend that far.

Procedures for custodial interrogation are prescribed by two well known decisions: *Escabedo v. Illinois,* 378 U.S. 478, decided in 1964 and *Miranda v. Arizona,* 384 U.S. 436, coming two years later. Neither case purports to dictate the suppression of every statement or utterance given in the absence of the required warnings, but rather of statements of those arrested or on whom suspicion has focused. Appellant suggests Miranda abolishes the distinction between the investigatory and accusative phases of crime detection. We disagree. The circumstances of this case and those present in *Escabedo* and *Miranda* invite comparison. Escabedo, with no warnings whatever, was confronted in custody with an alleged accomplice who accused him of murder. Escabedo said, "I didn't shoot Manuel, you did it." Handcuffed, Escabedo was questioned while standing up for four hours. Additionally, he was refused access to his retained counsel, who spent several hours at the detective bureau trying to confer with him. Somewhat similarly, Miranda was taken to police headquarters and identified by a rape victim; he was then questioned by two detectives for two hours without being told he had a right to counsel, nor was his right not to be compelled to incriminate himself effectively preserved.

By contrast, the testimony of witnesses, including appellant, show she was treated with deference. Sergeant Fogley said he repeatedly urged her to obtain counsel to no avail. Appellant, 33 years of age, is described as an articulate university student with a degree in education and completing requirements for a degree in marketing; the Miranda warnings were given her in writing no less than three times prior to her confession.

Appellant urges the point that Sheriff Marshall regarded her as a suspect. But that need not tarnish these proceedings. In many homicides an aura of suspicion initially touches spouses, lovers, rivals, even acquaintances, until attention can focus more clearly on one or more individuals. There is no evidence that appellant was more suspect than others in the beginning, as the sheriff's testimony reveals:

> A. I considered her as a suspect in a homicide case. We consider everyone a suspect until we sort them out.
>
> Q. So she was invited down to the police station at your request and you considered her a suspect at that time?
>
> A. She was no different in the case than numerous other people we had asked to come to the station to talk to us.
>
> Q. They were all considered to be suspects?
>
> A. That's correct. (p. 165).

We cannot say the trial court's rulings on appellant's motions were against the preponderance of the evidence.

Appellant submits that no effort was made to comply with Rule 2.3, A. R. Crim. P., which requires that if a law

enforcement officer asks a person to come to the police station he shall make it clear there is no obligation to comply. Whether the deputies observed the rule is not clear, as the question was never asked. It is clear that no objection was made to the trial court and, hence, it is not available to appellant on appeal. *Meyers v. State,* 271 Ark. 886, 611 S.W.2d 514 (1981).

Appellant also urges that a mistrial should have been declared because appellant's counsel moved to withdraw during the course of trial. In chambers, with appellant present, defense counsel informed the court he felt a fraud was being perpetrated in that appellant revealed to him the principal purpose of her defense was to protect Ben Hunt and prove him innocent. Counsel represented to the court that he could not ethically defend appellant in light of that disclosure. The trial judge asked appellant if she and counsel had discussed the issue at length and she assured him she was fully satisfied with the representation she was receiving. In the end, and after a conference between appellant and counsel, the motion for a mistrial seems to have been withdrawn with Mr. Werner's comment, "Your Honor, we have reconsidered. We are going to call Dr. Finch to testify and also the defendant, if she wants to testify," and with that the trial continued. (See p. 715). Under the circumstances we could hardly say the trial court abused its discretion.

The judgment is affirmed.

ADKISSON, C.J., and PURTLE, J., dissent.

SUPREME COURT OF ARKANSAS

No. CR 81-112

Opinion Delivered March 22, 1982

CONNIE LOUISE LASCANO ..... *Appellant*

v.

STATE OF ARKANSAS ..... *Appellee*

DISSENTING OPINION

RICHARD B. ADKISSON, *Chief Justice*

By direction of the Washington County Sheriff two deputies "picked up" appellant at her home, took her to the sheriff's office, and questioned her about the murder. Appellant responded, incriminating herself; she was then advised of her right to remain silent as required by *Miranda v. Arizona*, 384 U.S. 436 (1966); afterwards, she made other incriminating statements.

At the time she was "picked up" from her home, she was one of two prime suspects in the murder. Evidence that this "pick up" was, in effect, an arrest can be garnered from the failure of the deputies to advise her that she was not required to accompany them. Such a statement is required by Rule 2.3, Ark. Rules Crim. Proc., Ark. Stat. Ann., Vol. 4A (Repl. 1977).

It is clear from these facts that this was a custodial interrogation to which *Miranda* was intended to apply. *Miranda* warnings should have been given at the beginning of the interrogation rather than after an incriminating question had been asked and answered. The admission in evidence of this statement was prejudicial error. This case should be reversed and remanded.

SUPREME COURT OF ARKANSAS

No. CR 81-112

Opinion Delivered March 22, 1982

CONNIE LOUISE LASCANO ..... *Appellant*

v.

STATE OF ARKANSAS ..... *Appellee*

DISSENTING OPINION

JOHN I. PURTLE, *Associate Justice*

The majority correctly states the body of Mrs. Jeanie Hunt was found in the kitchen of her Fayetteville home on Saturday, October 25, 1980. It was determined that she died about 8:30 or 9:00 p.m. on the previous evening. Since appellant was not taken into custody until about 7:30 p.m. on October 26, it was already known by the officers that the death had occurred at the time stated above.

Sheriff Herb Marshall was in charge of the investigation, and he stated: "It had to be one of two people." The two people he referred to were the appellant and Ben Hunt, the husband of the deceased. The majority opinion at one point states: "Appellant had not been singled out as a suspect." This is simply incorrect in light of Sheriff Marshall's testimony recalling a conversation with appellant in which he said, "It is either you or Ben Hunt."

With the background information the officers possessed there was no excuse for not giving the appellant her warnings prior to the commencement of interrogation. Instead, the officers very skillfully asked her a few perfunctory questions and then came down to the heart of the

case. After they had determined that she had been at Jeanie Hunt's house about the time of the murder they then decided to give her her warnings. The only thing the officers needed to know to determine the identity of the murderer was who was present at the victim's home at about 8:30 p.m. on Friday night. Having found out the appellant was this person they then proceeded to warn her. This is shutting the barn door after the horse is out.

It is ironic that the majority cites but two sources of the law upon which to base its opinion in regard to the questions raised by the custodial interrogation; those being *Miranda v. Arizona*, 384 U.S. 436 (1966); *Escabedo v. Illinois*, 378 U.S. 478 (1964). Both *Miranda* and *Escabedo* have held that a person has certain rights originating in that source of highest authority, the United States Constitution and the Bill of Rights. There is no justifiable way that the appellant's rights under the Fourth and Fifth Amendments have been protected despite the majority's apologia to that effect.

The exclusionary rule was first articulated in the case of *Weeks v. United States*, 232 U.S. 383 (1914). The United States Supreme Court found that evidence was obtained through a warrantless search and thereby declared it illegal. The court stated that if the evidence were accepted it "would be to affirm by judicial decision a manifest neglect, if not an open defiance, of prohibitions of the Constitution." The court reasoned that judicial integrity demanded that the courts not act as accomplices to violators of the constitution. The court developed this rule further in the case of *Silverthorne Lumber Co. v. United States*, 251 U.S. 385 (1920). In *Silverthorne* the government had used an illegal search to gain information upon which to base an indict-

ment and to subpoena incriminating documents. In following the reasoning in the *Weeks'* case, Justice Holmes, speaking for the court, stated:

> . . . The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court, but that it shall not be used at all.

The doctrine culminated in the case of *Nardone v. United States*, 308 U.S. 338 (1939), wherein it was held that information acquired by such unconstitutional means were "fruits of the poisonous tree" and could not be used as evidence in a criminal prosecution. Justice Holmes stated in *Silverthorne* that without the exclusionary rule the Fourth Amendment becomes a mere form of words. Justice Brandeis stated in his dissent in *Olmstead v. United States*, 277 U.S. 438 (1928): ". . . If the court allows mistaken ideas of the requirements of the Constitution to pass muster, it will teach ignorance of the Constitution . . ." Therefore, if we allow illegal procedures, through ignorance or by design, to erode our processes, judicial integrity itself will be sacrificed in order to meet the needs of expediency. Justice Brandeis' *Olmstead* dissent was later afforded due deference by the court's specific overruling of *Olmstead* in *Katz v. United States*, 389 U.S. 347 (1967). Although the exclusionary rule originally applied only to the United States government, it was extended to the states through the Fourteenth Amendment to the United States Constitution in the case of *Mapp v. Ohio*, 367 U.S. 643 (1961). In *Mapp* the court stated that experience had determined that the exclusionary rule was the only effective means of deterring police misconduct in their zeal to apprehend criminals. It is abundantly clear in this case that the exclu-

sionary rule, as previously discussed, would apply to violations of both Fourth and Fifth Amendment rights.

Regardless of the manner in which the majority sets forth the facts and the law in the present case, it is obvious that the appellant was one of only two suspects in this murder case. This was fully known by the officers when they first questioned her. The warnings should have been given prior to the questioning. *Miranda v. Arizona*, supra. Therefore, all the talk about insisting upon her calling an attorney and reading her rights three or four times to her is an after the fact attempt to cover up the fatal error in this case. Even a guilty person is entitled to a fair trial. This is all the state or the defendant is entitled to.

In the case of *Hayes v. State*, 269 Ark. 47, 598 S.W.2d 91 (1980), the facts show that the police went to Hayes' house as a starting point in their investigation of a murder that had occurred a short time previously. They knew that the deceased had been living with Hayes. He voluntarily accompanied them to the police department, then gave conflicting stories about when and where he last saw the victim. At that point the police decided he was a possible suspect and he was given his Miranda warnings. In the present case, it is abundantly clear that Connie Lascano was considered to be a suspect even before the officers came to get her.

Rule 2.3, A. R. Crim. P., states:

> If a law enforcement officer . . . requests any person to come to or remain at a police station, . . . he shall take such steps as are reasonable to make clear that there is no legal obligation to comply with such a request.

In the present case, two police officers appeared at appellant's home, advised her that they were police officers and asked her to come down to the sheriff's office, after which she was placed in the back seat of the police vehicle and transported to the sheriff's office. One of the officers, Sergeant Charles Rexford, testified in response to the question, "Did you tell her she was a possible suspect in the case?"; "No, I did not." Furthermore, the uncontradicted evidence is that the police officers made no attempt to comply with Rule 2.3. It is my opinion that this violation combined with the other, serious errors brought before us in this appeal should be grounds for reversal. There is no doubt in my mind but that there was ample available legal evidence with which to convict the appellant. However, I would not whittle away one word or one letter of the constitution in order to make the present conviction stand up.

I dissent.

STATE'S EXHIBIT 17

Connie Falcono was interviewed at the P/A's office in Fayetteville at 5:13 PM on Oct 27, 1980 by Sgt Doug Fogley of the Arkansas State Police.

I have been having an affair with Ben Hunt for 2 years (next month) and I loved him very much. I believe Ben felt the same way about me.

Ben was married and I knew it however he and his wife Jean were not getting along at all and there was to be a divorce. I became pregnant during the affair by Ben and I had an abortion at the women's clinic in Fayetteville last February.

CF 10-27-80

I became very emotional due to the affair and even attempted suicide by overdosing with pills 2 days after the abortion.

DM 10/27/80

Lately, Ben's problems with his wife Jean became magnified due to her seeing another man and ~~her~~ following Ben nearly everywhere to catch him being unfaithful. Jean did know however that Ben and I were having an affair. Their marital problems

increased so much since their separation that Ben was kept in a constant state of upset + turmoil.

Jean and I began to hate each other and on one occasion sometime in April or May she drove by my apartment on Skull Creek and threw a rock through my window with a note on it advising me to stay away from "other people's husbands". I also received obscene phone calls, sometimes from a mans voice sometime a woman. I'm sure Jean was the cause of these calls.

CW 10-27-80 DM 10/27/80

About six weeks ago I knew Jean wasn't going to be home and I took a can of spray paint and painted graffiti derogatory to Jean all over her house (gates, doors + screens) I realize this was childish, however I was so upset and frustrated I couldn't help it.

I loved Ben so much that it began to get unbearable seeing what she was doing to him.

Last Friday (10/24/80) I saw Jean on the Oak Plaza shopping center parking lot in Fayetteville. She didn't see me. I knew Ben was going to be out of town and I decided it would be best to go see Jean face to face and find out her plans with ~~him~~ Ben in order to determine what course my life was going to ~~be~~ take. It was my last semester of school and I didn't know whether I should stay with Ben or move somewhere else and get a job.

CL 10-27-80

DAF 10/27/80

Friday night after taking my daughter and some of her friends to a skating party I returned home and watched television for a while, ~~then~~ decided to go see Jean.

I left my apartment shortly after 8:00 PM and arrived at Jeans home around 8:20 or 8:30 P.M. I went to the front door and got no answer when I rang the bell. I waited 2 or 3 minutes and started to leave. When I was going back to

my car, Jean came around the back toward the drive and asked who was there. I walked up to her and she recognized me. I told her I needed to talk to her and she invited me in the house. She asked me to have a seat and I sat at the table in the kitchen. She excused herself and went back to the bedroom, I assumed this was to use the phone. She stayed gone about 5 minutes and came back in and sat down with me. The atmosphere was very strained. I told her I was sorry for the way everything was working out and I didn't want to make her mad but I had to talk to her. She said she was sorry about a lot of things too and asked if I was still seeing Ben. I denied it and she told me I was lying, that she knew I was still seeing him. The conversation from this point gradually deteriorated.

CH 10-27-80

DAT 10-27-80

She said many derogatory things about the relationship between Ben and I. She said she had all of Ben Hunt she could take.

She told me she was going to ruin Ben before this thing was over and she promised that she would never let "Ben and I be together". She ~~said~~ she would take his children and make sure he would never even see them if I was with him as she would show I was unfit. We talked for quite awhile and the conversation worsened. She began to shout and call me names. She said Ben screwed around all the time and I wasn't the only one either. She promised to tell everyone what a whore I was and threatened to tell Ben's children what kind of man he was.

Cle 10-27-80

NM 10-27-80

She finally got up and screamed at me to get out and that I had no business to be in her house

talking to her. I told her I was involved and I had a right to know what was happening. I told her to leave Jim alone. She had no right to keep messing up his mind. Just leave him alone! We were both standing and she grabbed my left arm and said "She's had enough" she didn't want to talk to me any more and for me to get out. She started pulling me toward the door and then I pulled my pistol from my right coat pocket. She saw the gun and let go of my arm. Gloria when I shot her. I shot her three times and she fell on the kitchen floor. She screamed when I shot her and tried to get up. I shot her one more time and she fell again and screamed again. She lay still for a moment then started to crawl toward the corner then collapsed face down and was still. I looked

CL 10-27-80

DM 10-27-80

at her a moment then I wiped the glass I had been drinking from with a cloth and left. I know when I left she was still making gurgling sounds but I didnt know wether she was dead or not. There was a lot of blood.

I had put the gun in my pocket prior to going out and seeing her. I didnt have the intention of killing her when I went out there but did heard from Ben that she had gotten a gun and was carrying it. I took my gun in case I needed it for protection

CL 10-27-80

I left the house after I cut her and drove home and changed into my work clothes.

NM 10-27-80

I wrapped the pistol in a towel and drove to the White River Bridge on Hwy 68 East I drove down a dirt road on the North side of the bridge up to the river and threw the gun away into the water. I then picked up my daughter

and her friends, dropped them off at the apartment and went to work at the Ramada Inn.

On Sunday (10/26/80) I threw 3 other towells away in the trash that had the same print design on them as the one I had wrapped the gun in.

I bought this 22 cal pistol at Wilson's in Berryville along with a box of ammunition on Oct 3rd or 4th. I felt I needed it for protection.

I make this statement of my own free will and no threats or promises have been made to me. [concluded at 701 PM 10/27/80]

Connie L Lucas
10/27/80

D A Fogley
10/27/80

DEFENDANT'S EXHIBIT "A"

INTERVIEW OF SUSPECT

OFFICER: Sheriff Herb Marshall
DATE: October 27, 1980 2:45 p.m.
NAME: Connie Lascano

CHARGE: Homicide
CASE: 80-1-2 Jeanie Hunt

At 2:45 p.m. this date, Connie Lascano was interviewed by Sheriff Herb Marshall in the Criminal Investigation office at the Washington County Sheriff's Department concerning the shooting death of Jeanie Hunt.

After being reminded of her Constitutional Rights by Sheriff Marshall and agreeing to answer questions, Connie Lascano admitted killing Jeanie Hunt. This was after being accused of conspiring with Ben Hunt to do away with his wife. She admitted that she alone was responsible for the death and Ben Hunt had nothing to do with it.

When Sheriff Marshall questioned Connie as to the whereabouts of the gun, she refused to tell him saying that it was done and the gun wasn't needed. Sheriff Marshall reminded her that Ben Hunt could not be completely cleared until the gun was found to prove that his fingerprints were not on the gun. She finally said she had thrown the gun in the river after she had left Jeanie's house. She advised she had thrown the gun as far as she could in the river after crossing the bridge on Hwy. 68 E. and turning to the left. (Tr. 143)

C 36-299-80
Fogley

Office - Supreme Court, U.S.
FILED
SEP 24 1982
ALEXANDER L. STEVAS
CLERK

In the

Supreme Court of the United States

No. 81-2370
October Term, 1981

Connie Louise Lascano ..... *Petitioner*

V.

State of Arkansas ..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

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Attorneys for Appellee

QUESTIONS PRESENTED FOR REVIEW

I. WHETHER POLICE OFFICERS WERE REQUIRED TO GIVE PETITIONER *MIRANDA* WARNINGS WHERE THE INVESTIGATION HAD NOT FOCUSED ON PETITIONER AND THE INTERVIEW WAS NOT CUSTODIAL?

II. WHETHER PETITIONER'S STATEMENT WAS TAKEN IN VIOLATION OF HER FIFTH AND FOURTEENTH AMENDMENT RIGHTS AGAINST SELF-INCRIMINATION?

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In the

Supreme Court of the United States

No. 81-2370
October Term, 1981

Connie Louise Lascano ..... *Petitioner*

V.

State of Arkansas ..... *Respondent*

ON PETITION FOR WRIT OF CERTIORARI
TO THE SUPREME COURT OF ARKANSAS

BRIEF FOR RESPONDENT IN OPPOSITION TO PETITION

Respondent, State of Arkansas, responds to petitioner's petition for writ of certiorari to the Supreme Court of Arkansas.

OPINIONS BELOW

The opinion of the Arkansas Supreme Court affirming petitioner's conviction is reproduced in the appendix of the petition for certiorari.

JURISDICTION

The petitioner has adequately set forth the jurisdictional grounds.

CONSTITUTIONAL PROVISIONS INVOLVED

The relevant constitutional provisions were stated by petitioner.

SUMMARY OF ARGUMENT

The petitioner seeks to relitigate in this Coiurt the lawfulness of her confession. The Fifth Amendment does not require that every conversation between a police officer and a citizen in a police station be preceded by the giving of *Miranda* warnings. The petitioner was advised of her rights several times before she confessed to the murder of her lover's wife. The state court properly considered federal law in determining that the petitioner's confession was admissible.

I.

THE POLICE OFFICERS WERE NOT REQUIRED TO GIVE PETITIONER *MIRANDA* WARNINGS WHERE THE INVESTIGATION HAD NOT FOCUSED ON PETITIONER AND THE INTERVIEW WAS NOT CUSTODIAL.

On Saturday, October 25, 1980, the body of Mrs. Hunt was discovered. As part of the general investigation, persons who were familiar with the deceased were asked to come to the sheriff's office. The petitioner was asked to come to the sheriff's office. She was interviewed by a state police investigator in an office at the sheriff's office.

She was asked general questions such as her name and address and whether she was familiar with the deceased. She was asked when she had last seen the deceased. Her answer that she had last seen the deceased at 8:30 p.m. on Friday alerted the officer that petitioner might be a suspect. He immediately advised petitioner of her *Miranda* rights. *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed.2d 694, 88 S.Ct. 1602, 10 ALR 3d 1060 (1966).

She gave a non-incriminating statement. During the evening, the police developed other evidence which provided probable cause for the arrest of the petitioner.

The following day she gave a statement in which she admitted killing the deceased and directing the police to the murder weapon. The petitioner asserted in the state courts that her full confession was the fruit of her incriminating admission. This argument was rejected by the trial court and the Arkansas Supreme Court.

The Constitution does not require that every conversation between a police officer and a citizen be preceded by the giving of *Miranda* warnings. Under the decisions of this Court, a citizen must be advised of his rights if a police investigation has focused upon him, *Escobedo v. Illinois*, 378 U.S. 478 (1964) or if the interview is "custodial". *Miranda v. Arizona, supra.* See, also, *Malone v. State*, 361 So.2d 674 (Ala. App. 1978), *cert. denied*, (Ala.) 361 So.2d 691, *cert. denied*, 439 U.S. 1081, 59 L.Ed.2d 50, 99 S.Ct. 863 (1979).

Based on the testimony at the hearing on motion to suppress, the trial court found that the incriminating admission was admissible. The Arkansas Supreme Court affirmed, finding that *Miranda* warnings are only required where the person has been arrested or suspicion has focused upon the person. (Petitioner's Petition for Certiorari, A-4)

The Arkansas courts correctly applied the principles announced by this Court. The fact that this initial interview occurred at the sheriff's office does not render this exchange a "custodial interrogation." This Court has had the occasion to define "custodial interrogation" in *Oregon v. Mathiason*, 429 U.S. 492, 50 L.Ed.2d 714, 97 S.Ct. 711 (1977). There this Court held that the interview of a parolee at a police station was not custodial, stating:

> "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." 384 US, at 444, 16 L.Ed.2d 694, 86 S.Ct. 1602, 10 Ohio Misc. 9, 36 Ohio Ops.2d 237, 10 ALR3d 974.

> * * *Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody." It was *that* sort of coercive environment to which Miranda by its terms was made applicable, and to which it is limited.

The finding of the state courts that petitioner's freedom had not been restricted should be accorded great weight. *Sumner v. Mata*, 449 U.S. 539, 66 L.Ed.2d 722, 101 S.Ct. 764 (1981).

The petitioner has not raised new or significant questions concerning the application of the Fifth Amendment to state criminal procedure which need to be addressed and resolved by this Court.

II.

PETITIONER'S STATEMENT WAS NOT TAKEN IN VIOLATION OF HER FIFTH AND FOURTEENTH AMENDMENT RIGHTS AGAINST SELF-INCRIMINATION.

The respondent will discuss the arguments raised in Points II and III of the Petition for Certiorari in this Point II.

The appellant's conviction of First Degree Murder was based in part on her confession which was held admissible after a pre-trial evidentiary hearing.

On October 26, 1980, the petitioner was twice advised orally and in writing of her rights as required by *Miranda supra*. On the following day the sheriff interrogated the petitioner. Although he did not again give the *Miranda* warnings, he did inquire whether petitioner remembered the warnings given on the previous evening. She responded that she remembered the warnings. During this interrogation the appellant admitted killing Mrs. Hunt.

Contrary to petitioner's assertion, the law does not require that *Miranda* warnings be repeated each time officers question a person. *United States ex rel. Henne v. Fike*, 563 F.2d 809, 814 (7th Cir. 1977), *cert. denied, Henne v. Fike*, 434 U.S. 1072, 98 S.Ct. 1257, 55 L.Ed.2d 776 (1977); *Sossamon v. State*, 245 Ark. 306, 432 S.W.2d 469, 471 (1968); *People v. Siervers*, 255 Cal. App. 2d 34, 62 Cal. Rptr. 841 (Cal. App. 1967).

Subsequently, the petitioner was interviewed by a state police officer. At the beginning of this interview, petitioner was again advised orally and in writing of her rights as required by *Miranda*. She then made a written confession which was received in evidence as a state's exhibit. Under the circumstances it is difficult to say that petitioner's confession was made without there having been proper warnings.

The petitioner argued in the state courts that her confession was involuntary because it was the product of psychological intimidation. The essence of this argument that her will was overborn because of the sheriff's threat to arrest and interrogate Ben Hunt, petitioner's lover. The trial court rejected that argument finding that petitioner had made a rational decision to protect her lover by confessing and claiming all responsibility for the killing. This finding of fact was based upon the trial court's resolution of the credibility of the witnesses. The findings of fact made by the state court are presumptively correct. *Sumner v. Mata, supra*. Certiorari is not intended to provide a forum for the relitigation of factual questions determined by the state courts.

It is clear that the trial court and the Arkansas Supreme Court applied the appropriate constitutional standards in determining that petitioner's confession was admissible. The petitioner's argument presents no new or novel questions of law which need to be addressed by this Court.

CONCLUSION

None of the basis for granting certiorari set forth in Rule 17, Rules of the Supreme Court of the United States are present. Therefore, the respondent requests this Court deny writ of certiorari.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, ARNOLD M. JOCHUMS, Assistant Attorney General, do hereby certify that I have served a copy of the foregoing pleading, by mailing a copy of same by United States Mail, postage prepaid, to Mr. Jeff Duty, 204 South Third Street, Rogers, Arkansas 72756, petitioner's attorney of record, this 22nd day of September, 1982.

ARNOLD M. JOCHUMS

Office - Supreme Court, U.S.
FILED
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NO. 81-2370

IN THE

Supreme Court Of The United States

OCTOBER TERM, 1981

CONNIE LOUISE LASCANO,

Petitioner,

VS.

STATE OF ARKANSAS,

Respondent.

REPLY BRIEF FOR PETITIONER

JEFF DUTY
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Attorney for Petitioner

QUESTIONS PRESENTED FOR REVIEW

1. Whether or not a suspect must be advised of his or her rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, and related cases, prior to any interrogation by the police officers.

2. Whether the petitioner's rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, and related cases, were violated by the authorities in this case.

3. Whether the police may continue to use a psychological approach on a suspect in the form of statements to the suspect after the suspect indicates that the questioning is at an end.

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REPLY BRIEF FOR PETITIONER

Argument in this reply brief will be confined to the second question presented for review as to whether the petitioner's rights under *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, 10 ALR 3rd 1060, were violated.

To summarize, this defendant was taken to the sheriff's office on October 26, 1980. There interrogation was started. After she had incriminated herself in that that she had last seen the deceased at about the time of the homicide; her *Miranda* rights were then read to her and she was formally charged and placed in jail. Then on the 27th day of October, 1980, she was taken from the jail where she had been held in custody to be interviewed by the sheriff of Washington County (R. 159). Her rights were not again read to her;

however, the sheriff did ask her if she was still "aware of her rights" and she said she was. At a point in the interrogation and before she had made any confession, she informed the sheriff that she did not want to answer any more questions and that she didn't want to talk to him any more (R. 210-11). This did not stop the sheriff and a further interrogation resulted in a confession to the sheriff (R. 160-61). After this confession, and on the same day at 7:01 p.m., Sgt. Doug Fogley of the Arkansas State Police wrote out a confession based on the contents of the previous interview, that same day, with Sheriff Marshall (R. 515-17). Sgt. Fogley then read to the defendant/petitioner her *Miranda* rights and read the written statement to her and had her sign it.

The State has failed to touch upon this sequence of events in regards to the request by the petitioner that interrogation stop. The petitioner testified:

> "I told Sheriff Marshall not to talk to me anymore. This was in the middle of the interview. I told him that I didn't want to answer anymore questions. He had told me the night before that I didn't have to (R. 210). Then he said I had to answer the questions or Ben would be brought in. I also thought I could say I didn't want to answer anymore questions and they wouldn't question me anymore. When I tried that, the Sheriff just kept on (R. 210)."
>
> "Q. What did he say to you?
>
> A. Well, after I told him I didn't want to answer anymore of his questions, he said I had to

> answer questions. If they didn't find the gun they would still involve Ben in conspiracy charges. I refused to say anything at first and that I didn't want to say anymore. Then he kept going on about how he needed the gun (R. 211)."

In *Miranda v. Arizona*, 384 U.S. 436, 16 L.Ed. 2d 694, 86 S.Ct. 1602, 10 ALR 3rd 1060, at 35-37:

> "Once warnings have been given, the subsequent procedure is clear. If the individual indicates in any manner at any time prior to or during questioning that he wishes to remain silent, the interrogation must cease. At this point he has shown that he intends to exercise his Fifth Amendment privilege. Any statement taken after the person invokes his privilege cannot be other than the product of compulsion, subtle or otherwise."

Sgt. Fogley, when he wrote the confession which the petitioner signed, knew of her statements to the sheriff. He wrote in substance what she had told the sheriff just a short time before, read it to her and had her sign it. The gist of this is that the confession was made to Sheriff Marshall after the petitioner had indicated that she wanted the interrogation to cease. The damage was done.

CONCLUSION

The petitioner respectfully prays this Court to issue a certiorari to the Arkansas Supreme Court.

Respectfully submitted,

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